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No. 602

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

LESLIE H. JAMOUNEAU,
Petitioner,

vs.

CLAIRE E. HARNER and ESSEX COUNTY RENT CONTROL BOARD,
Defendants-Respondents,

and

GROVER C. RICHMAN, JR., Attorney General of New Jersey,
Intervenor-Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY.

BRIEF FOR RESPONDENT GROVER C. RICHMAN, JR., ATTORNEY GENERAL OF NEW JERSEY, IN OPPOSITION.

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Intervenor-Respondent.

BRIEF FOR RESPONDENT GROVER C. RICHMAN, JR., ATTORNEY GENERAL OF NEW JERSEY, IN OPPOSITION.

Opinion Below.

The opinion of the Supreme Court of New Jersey is reported in 16 N. J. 500. There has been no Order respecting any rehearing.

Jurisdiction.

Appellant alleges that he is invoking the jurisdiction of this court under 28 U. S. C. A., Section 1257 (3), but, as will be shown *infra,* although appellant makes some argument based on the alleged conflict with the United States Constitution, the main thesis of his argument is that the State Rent Control Law is repugnant to the State Constitution.

Questions Presented.

(1) Was the plaintiff deprived of due process of law and the equal protection of the laws by reason of the alleged failure of the Supreme Court of New Jersey to follow prior decisions of that court interpreting the State Constitution?

(2) Was the plaintiff deprived of due process of law and the equal protection of the laws by reason of the decision of the Supreme Court of New Jersey that the New Jersey Rent Control Law of 1953 did not violate various provisions of the New Jersey and Federal Constitutions?

Statute Involved.

The New Jersey State Rent Control Act of 1953, P. L. 1953, c. 216, N. J. S. 2A:42-14, *et seq.;* pertinent provisions of which are set forth in Appendix B of this brief.

Statement.

The New Jersey State Rent Control Act of 1953 was approved July 7th, 1953 and was to take effect immediately, but by Section 30 thereof, which provided that

> "in the event that Federal rent control is in operation in any area of this State, and this Act is in operation also in such area, the provisions of such Federal rent control shall prevail",

the Act was inoperative until July 31, 1953, when Federal Rent Control ceased to exist.

By Sections 28 and 29 (N. J. S. 2A:42-41, 42) the Act became operative in those municipalities of the State in which

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the governing bodies found, by resolution, that there was a housing shortage therein, and that rent control was required for the protection, safety, health and general welfare of the people of the municipality. Such a finding was made by the governing body of the City of East Orange, in which city the plaintiff's apartment house is situate.

The present proceeding was instituted by plaintiff filing a complaint in the Essex County District Court against his tenant, Claire E. Harner and the Essex County Rent Control Board (Appendix A, *infra*, page 10) alleging that his property was subject to the New Jersey State Rent Control Act of 1953 and seeking a declaratory judgment as to the amount of the lawful base rental, under the New Jersey act, of the apartment occupied by the defendant-tenant. No claim was made in the original complaint that the State act was unconstitutional. However, some months later, on or about January 22, 1954, the plaintiff filed, with the permission of the Court, an amended complaint in which he alleged, among other things, that the New Jersey Rent Control Act of 1953 was unconstitutional because it allegedly contravened (a) Article III of the New Jersey Constitution setting up three branches of the State Government; (b) Article I, Paragraph 1 of the New Jersey Constitution guaranteeing to all persons the right to acquire, possess and protect property; (c) Article I, paragraph 20 of the New Jersey Constitution prohibiting the taking of private property for public use without just compensation; (d) Article 1, paragraph 9 of the New Jersey Constitution guaranteeing the right of trial by jury and (e) Section 1 of the 14th Amendment of the United States Constitution by allegedly depriving the plaintiff of his property without due process of law. The amended complaint sought a judgment that the

New Jersey Rent Control Act of 1953 was unconstitutional, or, "in the alternative, if said Act is determined * * * to be valid", that the lawful base rental for the defendant-tenant's apartment was that which had theretofore been established by an Order of the Federal Area Rent Director, even though the tenant was not paying that rent on July 31, 1953.

The Essex County District Court entered a Judgment of dismissal for want of jurisdiction. An appeal to the Appellate Division of the Superior Court of New Jersey was certified to the Supreme Court of New Jersey on that court's own motion. The Supreme Court, after argument, filed an opinion (Appellant's Appendix A) holding that the District Court had had jurisdiction to decide the constitutional questions raised; that the lawful base rent under the State Act was the rent actually paid on the statutory date, July 31, 1953; and that the State Act did not violate either the State Constitution or the Federal Constitution.

The opinion of Mr. Justice Heher, writing for the New Jersey Supreme Court, contains a detailed and thorough analysis of the contentions made, the settled law, and its application to the instant case.

ARGUMENT.

It is respectfullly submitted that the argument made by the appellant in his Petition for Writ of Certiorari shows not the slightest warrant for a review by this Court on Certiorari. The decision of the State Supreme Court was clearly correct.

The chief argument made by appellant is that the Supreme Court of New Jersey did not follow its prior de-

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cisions on the subject of the constitutionality of what appellant calls "local option statutes". It is not true that the Court failed to follow its prior decisions; but even if that were true, such action does not raise a Federal question authorizing review by this Court.

The same is true of the allegation that the Supreme Court of New Jersey was in error in holding that the State Act did not violate the State Constitution. The holding of the Supreme Court was proper, but even if it were not, the error of the State Court in interpreting its own Constitution does not give rise to a Federal question authorizing this court to review the decision on Certiorari.

Finally, the claim that there was no factual basis for the legislative determination that a rental shortage existed calling for the exercise of the State's police power and the enactment of Rent Control Legislation is completely without merit and presents no substantial Federal question.

POINT I.

No federal question arises by reason of the alleged failure of the State Court to follow its previous decisions nor by reason of its alleged failure to properly interpret the State Constitution.

For thirteen pages of his brief, plaintiff argues that he was denied due process of law and the equal protection of the laws because the State Supreme Court allegedly failed to follow the rule laid down in the prior decision of *Attorney General* v. *McGuinness,* 78 N. J. L. 346 (E. & A., 1910). Plaintiff argues that the statute "relegates the operation of a state law to local option without the sanc-

tion of a popular referendum" in contravention of the principle of the cited case. The fact is, as the New Jersey Supreme Court said in its opinion, that the doctrine of the case of *Attorney General* v. *McGuinness, supra,* has no pertinency in the instant case (Appellant's Appendix A, page 45; see also *Borough of Little Ferry* v. *Bergen County Sewer Authority,* 9 N. J. 536, 544 (1952)).

But even if the holding in *Attorney General* v. *McGuinness, supra,* were pertinent, so that the situation presented were one where the state court had refused to follow its previous decision, such action by the state court does not give rise to a federal question. (*Paterson* v. *Colorado,* 205 U. S. 454 (1906); *Tidal Oil Co.* v. *Flanagan,* 263 U. S. 444 (1923); *Brinkerhoff-Faris Co.* v. *Hill,* 281 U. S. 673 (1930)). As was said by Mr. Justice Brandeis in *Brinkerhoff-Faris* v. *Hill, supra,* at 281 U. S. 680:

> "It is true that courts of a state have the supreme power to interpret and declare the written and unwritten laws of the state; that this court's power to review decisions of state courts is limited to their decisions on federal questions; and that the mere fact that the state court had rendered an erroneous decision of a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the fourteenth amendment or otherwise confer appellate jurisdiction on this court."

So too, Mr. Justice Holmes said in *Paterson* v. *Colorado, supra,* at 205 U. S. 461:

> "There is no constitutional right to have all general propositions of law once adopted remain unchanged. Even if it be true, as the plaintiff in error says, that the supreme court of Colorado departed

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> from earlier and well-established precedents to meet the exigencies of this case, whatever might be thought of the justice or wisdom of such a step, the Constitution of the United States is not infringed. It is unnecessary to lay down an absolute rule beyond the possibility of exception. Exceptions have been held to exist. But, in general, the decision of a court upon a question of law, however wrong and however contrary to previous decisions, is not an infraction of the 14th Amendment merely because it is wrong or because earlier decisions are reversed."

Nor is there any basis for the claim, improperly asserted for the first time on this appeal (see *Herndon* v. *Georgia*, 295 U. S. 422 (1935)), that the state court's alleged reversal of its former decision constituted an impairment of the obligation of contracts contrary to Section 10, Article I, of the Federal constitution (*Tidal Oil Co.* v. *Flanagan, supra*).

The question of whether there has been an illegal delegation of the legislative power by the state legislature to some subordinate body is a matter of local concern involving the interpretation of the state constitution; it does not give rise to a federal question. (*Ohio ex rel Davis* v. *Hildebrant*, 241 U. S. 565 (1915); *Green* v. *Frazier*, 253 U. S. 233 (1920).) The interpretation of a state constitution is for the state courts. The state court's interpretation of its own constitution is binding on the Federal courts (*Paterno* v. *Lyons*, 334 U. S. 314 (1947); *State ex rel Dyer* v. *Sims*, 341 U. S. 22 (1950)).

POINT II.

The decision below is clearly correct as to any federal question which may exist.

As has been noted, plaintiff's basic complaint is that the State Court allegedly failed to follow its prior decisions. However, plaintiff does, in the course of his argument, suggest that the Act constitutes an invalid exercise of the police power so as to contravene the due process clause of the Federal Constitution. He argues that no shortage of rental housing exists in any area of the State of New Jersey which would warrant the Legislature in enacting the Rent Control legislation. This argument is fully met and dealt with by the Supreme Court in its opinion. Nothing need be added to what is there said.

Plaintiff's claim that "the act is void because of the absence therein of any finding of the existence of an emergency and a declaration of the existence thereof, the statements to this effect in the preamble being ineffective for the constitutional requisite" is utterly without merit. (See Opinion of the New Jersey Supreme Court, Appellant's Appendix, page 36; see also *Price* v. *Forrest*, 173 U. S. 410 (1899)).

Finally, the State Constitution controls the form which a state legislative act must take; no Federal question is involved. (See Point I, *supra*.).

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Conclusion.

It is respectfully submitted that plaintiff has completely failed to show any reason why a Writ of Certiorari should issue, and that, for the reasons hereinbefore set forth, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

GROVER C. RICHMAN, JR.,
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Trenton, New Jersey,
Attorney for Intervenor-Respondent.

HAROLD KOLOVSKY,
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Of Counsel.

DAVID M. SATZ, JR.,
Deputy Attorney General,
On the Brief.

Dated March 11, 1955.

APPENDIX A.

Plaintiff's Original Complaint.

Essex County District Court

LESLIE H. JAMOUNEAU,
Plaintiff,
vs.
CLAIRE E. HARNER, ESSEX COUNTY RENT CONTROL BOARD,
Defendants.

Civil Action.
Complaint.

1. The plaintiff, whose address is 36 Halsey Street, Newark 2, N. J., sues for a determination by declaratory judgment of this court of the lawful rent payable for apartment No. 1 (First Floor S. W. Corner) in a building at 74 Lenox Avenue, East Orange, Essex County, N. J., owned by the plaintiff and occupied by the defendant since March 1, 1952, under a month to month tenancy, which housing accommodations are subject to the New Jersey Rent Control Act of 1953, and shows:

2. That since March 1, 1952, the aforesaid housing accommodations have been subject to rent control under the United States Emergency Price Control Act of 1942 and the Housing and Rent Act of 1947, as amended, whereby the lawful, or maximum, rent for said housing accommodations was, until August 29, 1951, fixed at the amount of $60.00 per month.

3. That since August 29, 1951, the lawful, or maximum, rent for said housing accommodations has been fixed at $72.00 per month under authority of an order made by the

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Area Rent Director for the Northeastern New Jersey Defense Rental Area on September 4, 1951, pursuant with, and as required by, Section 204(o) of the said Housing and Rent Act of 1947 as amended, a copy of which order was then served upon the tenant as required by law.

4. That the said Housing and Rent Act of 1947 terminated at the close of July 31, 1953, since which time said housing accommodation has been, and still is, subject to the New Jersey State Rent Control Act of 1953 (Chap. 216), Section 19 of which provides that the

> "lawful rentals for housing space payable as of July 31, 1953, for premises then in existence shall be deemed the lawful base rentals for such housing space, and in any determination of such base rentals, the orders, if any, then in effect under any federal rent control shall be taken into consideration in making such determination • • •"

5. That no objection has ever been made by the defendant to the order increasing the maximum, or lawful, rent to $72.00 per month, either to the federal or state rent control agencies in their respective jurisdictions.

6. That the monthly rent actually paid by defendant and accepted by plaintiff for the months of July and August, 1953, and prior thereto, was $66.00.

7. That in August, 1953, plaintiff and defendant agreed upon a continuation of the aforesaid monthly tenancy at the lawful monthly rental of $72.00, which amount has been paid by defendant and accepted by plaintiff for the months of September, October and November, 1953.

8. That pursuant with authority contained in Section 7 of the New Jersey Rent Control Act of 1953, the State Rent

Control Director, under date of August 1, 1953, made and promulgated the following regulations, viz.:

> "Part I, General Provisions: Article II, Definitions:
>
> "(m-1) 'Lawful Base Rent' or 'Lawful Rent' means the rent actually and legally charged, received, payable or due for the rental period ending on July 31, 1953, or the last rental period immediately prior thereto * * * "
>
> "Part I, Article IV: Control of Rents and Prevention of Violation and Evasions:
>
> "1. It is hereby declared that the lawful base rentals or lawful rent for any controlled housing space under the Act and these Regulations shall be the rent actually and legally charged, received, payable or due for the rental period ending on July 31, 1953, or the last rental period immediately prior thereto * * * "

9. That in the further exercise of his aforesaid authority, the State Rent Control Director has issued written instructions to all County Rent Control Agencies and Review Boards.

> "that the lawful rent for controlled housing space under our Act and regulations is the rent in effect pursuant to agreement between landlord and tenant on July 31, 1953, or as a result of a notice given by the landlord to the tenant which was operative on July 31, 1953, or prior thereto * * * Therefore, any order of the Office of Rent Stabilization permitting an increase or decrease in rent which was not in effect between the landlord and tenant before July 31, 1953 has no standing under our Act, since such

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orders of the Federal agency do not continue on or after July 31, 1953, by reason of the fact that the Federal Rent Control Act expired on that date."

10. That by force of Section 13 of the New Jersey Rent Control Act of 1953, the plaintiff and defendant are incompetent to make any agreement binding upon the defendant determining the lawful rent for the housing accommodations in question, and the aforesaid agreement which the parties have made, determining the lawful rent to be $72.00 per month is therefore not binding upon the defendant.

11. That in the event of error in the determination of the lawful rent at $72.00 per month by the aforesaid agreement between the plaintiff and defendant, plaintiff is in imminent jeopardy of the triple forfeiture penalty provided by Section 25 of the New Jersey Rent Control Act of 1953.

12. That no orders have been issued, nor any other action of any kind taken by the County Rent Control Board relative to the subject premises, and no applications have been made, either by landlord or tenant, for such orders or actions.

13. Wherefore plaintiff demands judgment that this court declare: (1) that Section 19 of the New Jersey Rent Control Act of 1953 (Chap. 216) fixes the lawful base rental for any housing space in existence on July 31, 1953, at the maximum amount of rental lawfully payable therefor as of July 31, 1953, under any orders, applicable to said housing space, then in effect under Federal rent control; (2) that by force of said statute the present lawful rent for the housing space hereby concerned, i. e., the First Floor Southwest Corner apartment in building 74 Lenox Avenue, East Orange, N. J., is the maximum rental of $72.00 per

month which was established by the order of the Federal Area Rent Director dated September 4, 1951, and (3) that the agreement between the plaintiff and defendant determining the lawful rent for said housing space at the said amount of $72.00 per month is valid and lawful, and binding upon the parties thereto.

LESLIE H. JAMOUNEAU,
Plaintiff.

SAUL A. WITTES,
Attorney for Plaintiff.

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APPENDIX B.

Statute Involved.

The following pertinent portions of Chapter 216 of the Laws of 1953, the New Jersey State Rent Control Act, which are not included in the excerpts from that act set forth in the petitioner's Appendix E, are set forth herein:

SECTION 1 (N. J. S. 2A:42-14):

As used in this act:

"State rent control" means rent control under this act;

"Federal rent control" means the operation of any Act of Congress and of any rule or regulation promulgated pursuant to the authority of any Act of Congress and the administration of any such act or rule or regulation by any department, authority, agent, officer, or other administrative agency, authority or board of the Government of the United States in respect to housing space and the rental thereof in effect and operation in the State of New Jersey or in any part or parts thereof;

"Housing space" means any building or structure, or any part thereof or land appurtenant thereto, or any real or personal property, rented or offered for rent for living or dwelling purposes, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such property, but not including public housing or dwelling space in any hotel or established guest house, commonly regarded as a hotel or established guest house, as the case may be, in the community in which it is located; * * *

SECTION 7 (N. J. S. 2A:42-20):

The State Rent Control Director shall make and promulgate rules and regulations and prescribe forms to effectuate the purposes of this act relating to the following: * * *

Appendix B.

SECTION 9 (N. J. S. 2A:42-22):

The rules and regulations to be made and promulgated by the State Rent Control Director may contain such classifications and differentiations and may provide for such adjustments or reasonable exceptions, according to the use or character of an area or of property, or both, as in the judgment of said director are necessary or proper in order to effectuate the purposes of this act. * * *

SECTION 19 (N. J. S. 2A:42-32):

For the purposes of this act, lawful rentals for housing space payable as of July thirty-first, one thousand nine hundred and fifty-three, for premises then in existence shall be deemed the lawful base rentals for such housing space, and in any determination of the amount of such base rentals, the orders, if any, then in effect under any Federal rent control shall be taken into consideration in making such determination. For premises constructed or first rented after July thirty-first, one thousand nine hundred and fifty-three, the amount of the lawful rentals for housing space shall be the rentals lawfully payable as of the date of the first payment of rent for such housing space.

SECTION 30 (N. J. S. 2A:42-43):

In the event that Federal rent control is in operation in any area of this State and this act is in operation also in such area, the provisions of such Federal rent control shall prevail.

SECTION 35 (N. J. S. 2A:42-48):

In anticipation of the cessation of Federal rent control, appointments may be made hereunder, resolutions may be adopted by county boards of freeholders and by the governing bodies of municipalities; rules, regulations and forms may be prepared, and expenses, other than salaries, may be incurred.

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Appendix B.

SECTION 36 (N. J. S. 2A:42-49):

Upon the termination of rent control established pursuant to Federal law or regulation in this State or any area thereof, the State Rent Control Director shall request and is authorized to receive the transfer from the Federal Government of its records pertaining to rent control in this State or any such area thereof.

SECTION 38 (N. J. S. 2A:42-51):

This act shall take effect immediately but shall be inoperative to the extent provided herein, and this act shall cease to be in effect on December thirty-first, one thousand nine hundred and fifty-four.